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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/21/07  
 LAST UPDATED 3/15/07      HB 990/aHTRC/aSFC

SPONSOR Wirth

SHORT TITLE Real Property Transfer Tax Credit      SB \_\_\_\_\_

ANALYST Francis

### REVENUE (dollars in thousands)

| Estimated Revenue |               |           | Recurring<br>or Non-Rec  | Fund<br>Affected |
|-------------------|---------------|-----------|--------------------------|------------------|
| FY07              | FY08          | FY09      |                          |                  |
|                   | Insignificant | (\$200.0) | Recurring-<br>Increasing | General Fund     |
|                   |               |           |                          |                  |

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy Minerals and Natural Resources Department (EMNRD)

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee amended House Bill 990 to restore the carry forward of the credit to twenty years and clarify that the limit on a conveyance prior to January 1, 2008, is \$100,000 and after that the limit is \$250,000. The amendment also requires that the conveyance will not adversely affect the property rights of contiguous landowners.

#### Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amended House Bill 990 changed a grandfathering provision. The original bill stipulated that credits claimed prior to January 1, 2007 can be carried forward 20 years. The amendment stipulates that a credit for a conveyance that was made prior to January 1, 2008, that is less than \$100,000 can be carried forward 20 years.

Synopsis of Original Bill

House Bill 990 increases the personal and corporate income tax credit for the donation of land for open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation from \$100,000 to \$250,000. Credits claimed after January 1, 2007, can only be carried forward 5 years. Credits claimed prior to January 1, 2007, can be carried forward 20 years.

Taxpayers apply to the Energy Minerals and Natural Resources Department (EMNRD) for certification that the donation meets the criteria, EMNRD will issue a certificate indicating the maximum amount of the credit available to the taxpayer. This certificate must be included along with the claim to the Taxation and Revenue Department (TRD) which will give the taxpayer a document that states the value of the credit. The document then can be sold or otherwise exchanged one time to any other taxpayer.

The exchange of credit documents can only be transferred through a qualified intermediary who shall keep accounts of credits being transferred. The minimum amount of transfer is \$10,000. The intermediary nor the intermediary's employees cannot be a convicted felon, cannot have had a license revoked, and cannot be an accountant or real estate professional.

If a credit is claimed as a federal itemized deduction, the amount must be added back into income for the purposes of state income tax. Taxpayer is defined to be any US citizen or resident, a limited liability company, a domestic corporation, an estate, including foreign estates, or a trust.

**FISCAL IMPLICATIONS**

Changing the carry-forward back to 20 years as amended should not change the fiscal impact calculated here. Those taxpayers who are likely to need a 20 year carry-forward may transfer the credit to a taxpayer who can use it more quickly. The "adverse impact" provision may result in fewer conveyances but it is difficult to estimate the fiscal impact.

**EMNRD:**

There are no direct fiscal implications to the Energy, Mineral and Natural Resources Department (EMNRD) Forestry Division. If the amendment to Section 7-2-18.10 NMSA 1978 and Section 7-2A-8.9 NMSA 1978 passes, it will increase the number of land donations and the amount of tax credit used. It will impact the amount of income tax collected. In 2004, EMNRD certified six (6) land donations with a total tax credit amount of \$501,050. In 2005, EMNRD certified fourteen (14) donations with a total tax credit amount of \$1,005,540.

Using data from TRD, there are expected to be an average of 10 claims with property values totaling \$1 million under the current credit (similar to EMNRD data). With the increase to \$250,000 credit, the fiscal impact in FY08 would be \$200,000 at the current rate of credits claimed, which according to Taxation and Revenue Department (TRD) is 20 percent. Due to the transferability, it is assumed that 50 percent of the credit will eventually be used, up from approximately 20 percent assumed in FY08. The net fiscal impact is \$500 thousand in reduced tax revenues by FY11. This assumes that intermediaries have entered the market and large taxpayers have learned of the program and can take advantage of it. Table 1 shows the fiscal

impacts. TRD reports that the impact in FY08 is likely to be small because the new transferable credits are likely to be claimed on tax year 2008 returns filed in April of 2009, although they could affect returns for estimated payments prior to that.

**Table 1: Fiscal Impact**

|      | Claim Rate |         |           | Impact    |
|------|------------|---------|-----------|-----------|
| FY08 | 0%         | -       | -         | -         |
| FY09 | 20%        | 200,000 | 400,000   | (200,000) |
| FY10 | 30%        | 300,000 | 600,000   | (300,000) |
| FY11 | 40%        | 400,000 | 800,000   | (400,000) |
| FY12 | 50%        | 500,000 | 1,000,000 | (500,000) |

**SIGNIFICANT ISSUES**

Land donations have become an important source for states and local governments to create open space, wilderness areas and protected areas. Many owners of land do not want to see it developed for a variety of reasons and tax incentives such as this one allow them to lower their income tax liability as a result.

Attached is a state by state comparison for 10 states that have similar credits compiled by the Land Trust Alliance (LTA). (These are states that responded to LTA). Only three of the states have transferable credits and most have a carry forward of 5 to 20 years (South Carolina has an unlimited carry forward).

According to the Conservation Resource Center, a non profit tax credit exchange in Colorado, the landowners who transfer their credits through the Center receive 82 percent of the value of the credit. (<http://www.taxcreditexchange.com/whywork.html#one>) That means that a portion of the credit will go to the Center for administration and a buyer who will receive the credit to use against its tax liability.

**How transferability would work.** When a land donor receives the certificate from EMNRD with the amount of the credit, the donor would have two options. If the donor has sufficient tax liability, then the donor would hold the certificate and claim the credit over five years. If, however, the donor does not have sufficient tax liability, the donor could sell the certificate to an intermediary at a discounted price. A taxpayer with significant tax liability would buy the credit from the intermediary and claim the credit with TRD.

Example:

Donor donates land with a value of \$1,000,000 qualifying her for the maximum \$250,000 credit. Her tax liability is only \$10,000, she can transfer the remaining \$240,000 to the intermediary, who buys it for 80 percent of the value or \$192,000. The intermediary finds a taxpayer who has at least \$240,000 in tax liability who buys the credit from the intermediary for \$216,000. In this example, the credit is divided between the donor, the intermediary and a taxpayer who buys the credit.

**Table One: Example of Transfer**

|                |           |
|----------------|-----------|
| Property Value | 1,000,000 |
| Tax Credit     | 250,000   |

|                                    |                |
|------------------------------------|----------------|
| Donor                              |                |
| Tax Liability                      | 10,000         |
| Remaining Credit                   | 240,000        |
| <b>Sale to Intermediary at 80%</b> | <b>192,000</b> |
| Intermediary                       | 240,000        |
| Sale to Taxpayer at 90%            | 216,000        |
| <b>Intermediary Income</b>         | <b>24,000</b>  |
| Taxpayer                           |                |
| Tax Liability                      | 240,000        |
| Cost of Credit                     | 216,000        |
| <b>Taxpayer Savings</b>            | <b>24,000</b>  |

From the state’s perspective, only 80 percent of the credit went to the targeted taxpayer. This level is probably efficient enough to make the program worthwhile. If the donor only received 50 cents on the dollar, this would be considered an *inefficient* program in that half the credit is going to unintended taxpayers. Transferability is an excellent tool but must be carefully monitored to assure that all parties have adequate information.

#### TECHNICAL ISSUES

The amendment requires that the conveyance does not impact the property rights of contiguous landowners but there is no specific information or guidance on determining how a conveyance impacts these landowners. There also is no procedure for appeal or adjudication.

#### EMNRD:

The amended Part H in Section 7-2-18.10 NMSA 1978 and Section 7-2A-8.9 NMSA 1978 specifies January 1, 2008 for the initiation of transferability of credits issued on or before January 1, 2007. Several applications are pending EMNRD certification for donations made on or before December 31, 2006. If certified, will these tax credits fall within the parameters of the amended Land Conservation Incentives Act? Or, is it the intention of the amendment Sponsor to begin the effects of this amended Act on land donations made after January 1, 2007.

#### OTHER SUBSTANTIVE ISSUES

Land donors for conservation also enjoy a federal deduction from income for federal tax purposes but this deduction is scheduled to expire this year. It is 50 percent of the net value (the assessed value – the value in conservation land) for regular property and 100 percent for agricultural land and can carry it forward for 16 years. There is a bill pending in Congress to make this permanent.

#### ADMINISTRATIVE ISSUES

TRD reports that the switch from 20 year carry forward to 5 year carry forward will be much more efficient to administer.

**ALTERNATIVES**

As currently written, there are no restrictions on the operations of intermediaries. One option would be to direct EMNRD to develop regulations for these intermediaries such as rate setting.

An amendment clarifying the method by which the adverse impact on adjoining landowners is determined would address this issue.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

There will be less land donated for conservation purposes.

NF/mt

## Conservation Tax Credit State by State Comparison

| KEY  | CALIFORNIA   | CONNECTICUT   | COLORADO   | DELAWARE   | MARYLAND   |
|--|--|---|--|--|--|
| <b>State Law &amp; Effective Date</b>  | Natural Heritage (2002)<br>Preservation Credit   | Land Conservation/<br>Preservation Credits  | Gross Conservation<br>Easement Credit (2000)   | Land & Historic Resource<br>Conservation Credit (2000)   | Conservation Property<br>Tax Credit (1986)   |
| <b>Available Credit</b>  | Corporate Franchise (income)<br>Tax & Personal Income Tax  | Corporate Income Tax  | Colorado Residents,<br>Corporations, Trusts, Estates Taxes   | Personal and Corporate Income Taxes  | Income Tax   |
| <b>Conservation Benefits</b>   | Preserve wildlife & wildlife habitat, open<br>space, agricultural land, fish, plants,<br>water, or endangered species.<br>Conditions, must meet one or more:<br>(a) meet goals of Conservation Plan,<br>(b) protect species or habitat,<br>(c) conserve threatened farmland<br>in unincorporated areas, zoned<br>for agricultural use, etc.<br>(d) includes water rights, etc.<br>(e) used for or access to parks<br>or open space, etc. | Open Space Land:<br>(a) conservation of natural or scenic<br>resources,<br>(b) protect natural streams or water<br>supply,<br>(c) conservation of soils, wetlands,<br>beaches, or tidal marshes,<br>(d) enhance neighborhood parks,<br>forests, wildlife preserves, nature<br>reservations, or other open space,<br>(e) enhance public recreation<br>opportunities,<br>(f) preserve historic sites or | Preserve recreation, education,<br>habitat, open space,<br>or historical property                  | Open Space: natural habitat, rare biological<br>and natural resources, historic resources  | Conservation Property:<br>unimproved, not used for<br>commercial purpose, and subject to<br>conservation easement. |
| <b>Limit on Tools/Benefits</b>   | Fee Interests, Conservation<br>Easements, and Water Rights /<br>No credits on any required donation  | Fee Interests and Conservation<br>Easement  | Conservation Easement only   | Fee Interest and Conservation Easement   | Conservation Easement only   |
| <b>Size of Credit</b>  | 55% of Fair Market Value   | 50% of Fair Market Value  | 100% of first \$100,000 and 40% of<br>additional Fair Market Value                                 | 40% of Fair Market Value   | 100% of property tax owned   |
| <b>Caps on Credits</b>   | \$100 million / year statewide for<br>FY 01-02 through 04-05   |   | Only one credit per year not to<br>exceed \$260,000.   | \$1 million / year statewide for 1999 and ten<br>years thereafter.   | No   |
| <b>Carry Forward Periods</b>   | Eight succeeding years   |   | Twenty succeeding years  | Five succeeding years  | Fifteen consecutive years<br>following donation  |
| <b>Transferability</b>   | N/A  |   | Yes, but only once   | No   | No   |
| <b>Refundability</b>   | N/A  |   | Yes, only a partial refund up to \$50,000<br>if state revenues are above<br>specified thresholds.  | No   | No   |
| <b>Certification</b>   | Yes, Wildlife Conservation Board<br>must approve (WCB). Donor applies<br>to Donee. Donee must hold public<br>hearing before acceptance. Donee<br>must submit Plan of Acceptance to WCB.<br>WCB must provide Franchise Tax Board<br>with list of all approved donors and credits.   |   | No   | Yes, Department of Natural Resources &<br>Environmental Control, in conjunction with<br>Department of State and Division of<br>Historical & Cultural Resources will certify. | Yes, donation must be approved by<br>Board of Public Works   |
| <b>Recipient</b>   | State Resource Agency (SRA),<br>Local Government (LG), Nonprofit 501(c)(3)<br>Land & Water Conservation Organization<br>designated by SRA or LG.   | State, Political Subdivision, Nonprofit<br>Land Conservation Organization   | Government Entity or Charitable<br>Organization [501(c)(3)] pre-existing<br>donation by two years. | Public Agencies and Qualified Private<br>Nonprofit Charitable Organizations.   | Maryland Environmental Trust   |
| <p><b>Note:</b> The information reported above reflects the language of each State's conservation tax credit statutes and agency descriptions thereof. Information institutionalized in broader tax codes was beyond the scope of this review and may not be reported.</p> |  |   |  |  |  |

**For More Information on the NC Conservation Tax Credit Program, Log onto: <http://ncctc.enr.state.nc.us>**

## Conservation Tax Credit State by State Comparison

| KEY  | MISSISSIPPI   | NEW MEXICO   | NORTH CAROLINA  | SOUTH CAROLINA  | VIRGINIA  |
|--|---|--|---|---|---|
| <b>State Law &amp; Effective Date</b>  | Income Tax Credit for Donations of Land that are Priority Conservation Sites (2003)     | Land Conservation Incentives (2004)  | Conservation Tax Credit (1983)  | Conservation Tax Credit (2001)  | Land Conservation Incentives (2000)   |
| <b>Available Credit</b>  | Individual Income Tax   | Corporate Income and Franchise Tax   | Corporate and Individual Income Tax   | Any Tax Payer who has qualified for and claimed federal charitable contribution. Per IRS Code Section 170(h). | Individual and Corporate Income Tax   |
| <b>Conservation Benefits</b>   | Natural Heritage sites and stream bank habitat along Scenic Stewardship Program streams | Open space, natural resource or biodiversity conservation, agricultural preservation, or watershed or historical preservation. | Public beach access or use, public access to public water or trails, fish and wildlife conservation, or other similar land conservation purposes. |   | Agricultural and forest use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed, and/or historic preservation |
| <b>Limit on Tools/Benefits</b>   | Fee Interests and Conservation Easements  | Fee Interest and Conservation Easement / no credit on donations required for subdivisions or building permits                  | Fee Interest and Conservation Easement/ no credit on donations required by local ordinance or to increase building density                        | Fee Interest and Conservation Easement  | Fee Interest and Conservation Easement / no credit for donations required to obtain subdivision or building permits, or to fulfill density requirements     |
| <b>Size of Credit</b>  | 50% of allowable transaction costs  | 50% of Fair Market Value   | 25% of Fair Market Value  | 25% of federal Charitable Deduction Value.  | 50% of Fair Market Value / may claim both Land Conservation Credit and Historic Rehabilitation Credit   |
| <b>Caps on Credits</b>   | \$10,000  | \$100,000 per year / only one credit per year.   | \$500,000 Corporate, and \$250,000 Individual plus charitable contribution  | \$250/acre, not to exceed \$52,500.   | \$100,000 per year  |
| <b>Carry Forward Periods</b>   | Ten succeeding years  | Twenty successive years  | Five successive years   | Unlimited, until all credit is claimed  | Five successive years   |
| <b>Transferability</b>   | No  | No   | No  | Yes   |   |
| <b>Refundability</b>   | No  | No   | No  | No  |   |
| <b>Certification</b>   | No  | Yes, certified by Secretary of Energy, Minerals, and Natural Resources   | Yes, Certified by Department of Environment and Natural Resources   | No  | No  |
| <b>Recipient</b>   | N/A   | State, Political Subdivision, or Charitable Organization eligible to hold land for conservation or preservation purposes.      | State, Local Government, or Qualified Nonprofit organized to receive and administer land for conservation purposes.                               | Qualified Recipient per IRS Code Section 170(h).  | Commonwealth, an instrumentality thereof, or a Charitable Organization eligible to hold land for conservation or preservation purposes.                     |
| <p><b>Note:</b> The information reported above reflects the language of each State's conservation tax credit statutes and agency descriptions thereof. Information institutionalized in broader tax codes was beyond the scope of this review and may not be reported.</p> |   |  |   |   |   |

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